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Summary of responses to the questionnaire seeking the views of States and indigenous peoples on best practices regarding possible appropriate measures and implementation strategies to attain the goals of the United Nations Declaration on the Rights of Indigenous Peoples

Report of the Expert Mechanism on the Rights of Indigenous Peoples

Summary

The present conference room paper contains a draft summary of responses from States and indigenous peoples to the questionnaires seeking their views on best practices regarding possible appropriate measures and implementation strategies to attain the goals of the United Nations Declaration on the Rights of Indigenous Peoples, as requested by the Human Rights Council in its resolution 27/13. Following discussions at the eighth session, the Expert Mechanism on the Rights of Indigenous Peoples will finalize this document for submission to the Human Rights Council at its thirtieth session.

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I. Introduction

1. In its resolution 18/8 of 2011, the Human Rights Council first requested the Expert Mechanism on the Rights of Indigenous Peoples to undertake, with the assistance of the Office of the United Nations High Commissioner for Human Rights (OHCHR), a questionnaire on best practices regarding possible appropriate measures and implementation strategies to attain the goals of the United Nations Declaration on the Rights of Indigenous Peoples. In its resolutions 21/24 (2012) and 24/10 (2013), the Council requested the Expert Mechanism to continue to undertake the survey, with a view to completing summaries of responses for presentation to the Council at its twenty-fourth and twenty-seventh sessions, respectively. In its resolution 27/13 of 25 September 2014, the Human Rights Council once again requested the Expert Mechanism on the Rights of Indigenous Peoples to continue this exercise. The present report builds upon reports presented to the Human Rights Council at its twenty-first, twenty-fourth and twenty-seventh sessions (A/HRC/21/54, A/HRC/24/51 and A/HRC/27/67).

2. Upon reviewing the questionnaires distributed in previous years, the Expert Mechanism on the Rights of Indigenous Peoples decided to update them, with the aim of streamlining and clarifying the information sought from States and indigenous peoples, as well as taking into account the outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples (General Assembly resolution 69/2). The revised questionnaire focuses on best practices in the areas of self-determination; participation in decision-making including free, prior and informed consent; languages and culture; non-discrimination and equality; lands, territories and resources; treaties, agreements and other constructive arrangements; and measures taken to promote and protect rights of indigenous women, youth, children, elders, persons with disabilities and any other vulnerable groups.

3. The questionnaires for indigenous peoples and States were designed to be as consistent as possible with each other, in order to facilitate the comparison of responses and generate ideas for partnerships for implementation of the Declaration. All of the questions posed to States and indigenous peoples are reproduced below. The complete questionnaires, as well as the responses received (where permission was granted) are available on the website of the Expert Mechanism.[1]

4. The Expert Mechanism thanks those who responded to this year's questionnaire. Responses were received from Australia, Burundi, Chile, Colombia, Costa Rica, Cuba, Denmark and the Government of Greenland, France, Guatemala, Japan, Paraguay and Peru.

5. The Expert Mechanism also thanks the following indigenous peoples and indigenous peoples' organizations and representative bodies for their responses to this year's questionnaire: ALDET Centre (Saint Lucia); Asociación Kunas Unidos por Napguana (Panama); Corporación Red Nacional de Mujeres Comunales, Comunitarias, Indígenas y Campesinas de la República de Colombia (REDCOMUNCACOL); Elnu Abenaki Tribe (United States); Les Amis du Sankuru (Democratic Republic of the Congo); ONG ADJMOR (Mali); Rehoboth Basters Community (Namibia); Saami Parliament of Finland; and Tcemashane Community Development Trust (Botswana).

6. The Expert Mechanism also thanks the Faculty of Law at the University of Manitoba, Canada, for its assistance in reviewing the responses from States.

[1] Available from http://www.ohchr.org/EN/Issues/IPeoples/EMRIP/Pages/QuestionnaireDeclaration.aspx

II. Responses from States and from indigenous peoples

7. This section summarizes the responses from States and from indigenous peoples to the questionnaire. It must be borne in mind that responses from States and indigenous peoples may have conflicting views on the benefits of measures adopted to implement the Declaration or the ideal strategies to achieve its implementation.

A. National implementation strategies

8. The questionnaire posed the following question to States: "Does the State have an overarching national implementation strategy to attain the goals of the Declaration? If yes, please provide details, including the involvement of State institutions and indigenous peoples. If not, are there any plans to develop one?"

9. This question is linked to the commitment made by States in the outcome document of the World Conference on Indigenous Peoples, through their own representative institutions, to develop and implement national action plans, strategies or other measures and, where relevant, to achieve the ends of the Declaration.

10. Most States that responded did not have an overarching national implementation strategy specifically linked to attaining the goals of the Declaration. However, in their responses they discussed how the situation and rights of indigenous peoples are addressed through national development strategies, as well as programmes and policies in specific sectors, such as health and education.

11. Guatemala discussed the "K'atun Nuestra Guatemala 2032" strategy, which was prepared with the participation and consultation of the three different indigenous peoples in Guatemala: the Maya, Garifuna and Xinka. The plan guided the work of the State by focusing on reducing the gaps in access to education, improving overall health and improving access to water and basic sanitation. In addition, Guatemala's response highlighted that from 2013 onwards, the National Budget Law stipulated that budget-executing agencies needed to provide information regarding the beneficiary population of their programmes, including in terms of ethnicity.

12. In Costa Rica, the Vice-Ministry of Political Affairs had a strategy on indigenous peoples based on four axes: a consultation policy; a policy for the recovery of lands, territories and resources; a mechanism for dialogue with the 24 indigenous territories in the country; and inter-institutional coordination. Costa Rica's response also examined several sector-specific initiatives relating to indigenous peoples in the areas of health, education and employment.

13. Those States that did not have a national strategy nonetheless reported on measures they had taken to ensure that the goals of the Declaration were considered in policy and programme development. Australia, for example, noted that relevant Government agencies liaised closely on relevant issues to ensure the Declaration was taken into account.

14. Japan's response highlighted the establishment of a high-level Advisory Council for Future Ainu Policy, which referred to relevant provisions of the Declaration. This Council developed basic principles for new Ainu policy. Subsequently, Japan established the Council for Ainu Policy Promotion to discuss comprehensive and effective measures for Ainu people, which reflected the opinions of the Ainu people.

15. Paraguay noted that it had a National Human Rights Plan, which sought, inter alia, to address structural inequalities and discrimination in conformity with the goals of the Declaration.

16. Peru stated that it did not have a national plan, but in 2010 it established the Ministry of Culture, which included a Vice-Ministry for Intercultural Affairs. The Vice-Ministry was directly responsible for implementing specialized policies for indigenous peoples and technical assistance, in coordination with the pertinent public entities, based on dialogue with indigenous peoples' organizations. It was also in charge of administering territorial reserves established for indigenous peoples in voluntary isolation or initial contact.

17. Although Colombia did not have an overarching national implementation strategy, its response focused on its national laws and policies to promote and protect the rights of indigenous peoples in the areas of health and education.

18. Burundi noted that it had developed policies and strategies to improve the living conditions of the Batwa people, particularly in the areas of land, health and education.

19. A similar question was posed to indigenous peoples: "Do you have an overarching action plan or strategy to achieve the ends of the Declaration? If yes, please provide details about the implementation strategy, including how indigenous peoples have been involved. If not, are there any plans to develop one?"

20. Most indigenous peoples' organizations reported on a lack of national strategies or plans of action to achieve the ends of the Declaration. Responses from indigenous peoples highlighted the fact that the Declaration should be seen as an instrument of action for national policies that ensure the promotion and protection of indigenous peoples' rights.

B. Self-determination and autonomy

21. The questionnaire posed the following question to States and indigenous peoples: "Have specific legislative, policy, or administrative measures relating to self-determination and autonomy been adopted in your country? If yes, please provide details. If not, please outline any plans to develop legislative, policy or administrative measures in this area."

22. The importance of self-determination has been highlighted throughout the Expert Mechanism's work, including in its studies on access to justice (see A/HRC/24/50 and A/HRC/27/65) and participation in decision-making (see A/HRC/18/42 and A/HRC/21/55). The Expert Mechanism has repeatedly maintained that self-determination is an essential element for the fulfilment of other rights.

23. In their replies to the questionnaire, some States noted that they were party to international instruments that recognized the right of self-determination, which formed part of their domestic law.

24. Denmark and the Government of Greenland referred to the Act on Greenland Self-Government, which came into force in October 2009. The Act recognized that the people of Greenland were a people pursuant to international law, with the right to self-determination.

25. Paraguay's Constitution recognized the existence of indigenous peoples, including their right to preserve and develop their ethnic identity, their political and legal systems, as well as communal ownership of land in sufficient quantity and quality to preserve and develop their particular way of life. The Guatemalan Constitution also recognized specific ethnic groups, including the Maya people, respecting and promoting their way of life, customs, traditions, languages and use of traditional dress.

26. In Australia, the Aboriginal and Torres Strait Islander Peoples Recognition Act of 2013 recognized Aboriginal and Torres Strait Islanders as the first peoples of Australia. The Prime Minister remained committed to holding a referendum to recognize Aboriginal and Torres Strait Islander peoples in the Constitution by 2017.

27. In Chile, a free, prior and informed consultation process had been taking place since 2014, through which the Ministry of Social Development was seeking to establish new institutions that would validate the right of indigenous peoples to develop their rights to autonomy and self-determination. The indigenous peoples of the country decided to create a national council system to represent each of the various peoples (Mapuche, Aymara, Rapa Nui, Atacama, Quechua, Diaguita, Kawashkar and Yagán). There was also a "Proposal for a State Policy Agenda for Decentralization and Territorial Development of Chile", which recognized the Araucanía Region as multinational and multicultural in recognition of the Mapuche people.

28. In relation to self-determination, Peru's measures had two areas of focus. The first was taking steps to improve the identification and registration of indigenous peoples. The second was to recognize the right of self-determination for indigenous peoples in voluntary isolation and those in initial contact, including the recognition and protection of territorial reserves.

29. In the case of Costa Rica, at the time of reporting, the Government was supporting a draft law on indigenous peoples' autonomy which was being discussed by the Legislative Assembly.

30. Colombia, in addition to highlighting its ratification of the International Labour Organization (ILO) Convention No. 169 in 1991, also referred to Decree 1953 of 2014, which created a special regime for indigenous peoples' territories regarding the administration of their own health, education, and water and sanitation systems.

31. Responses from indigenous peoples varied significantly. In this regard, the Asociación Kunas Unidos por Napguana reported that the Kuna people had enjoyed autonomy over their territory (Comarca de Guna Yala) in Panama since 1935, under the leadership of the Kuna General Congress, through which 49 communities were represented. In other cases, while the legal framework provided for significant levels of autonomy, those rights were not in fact respected. Finally, some responses indicated situations in which domestic laws and institutions still did not recognize indigenous peoples (ONG Adjmor reporting on the situation in Mali, Rehoboth Basters Community reporting on the situation in Namibia, and Tsemashane Community Development Trust reporting on the situation in Botswana).

C. Participation in decision-making and free, prior and informed consent

32. The questionnaire posed the following question to States and indigenous peoples: "Have specific legislative, policy, or administrative measures been adopted to implement rights relating to participation in decision-making, including the obligation to seek free, prior and informed consent? If yes, please provide details. If not, please outline any plans to develop legislative, policy or administrative measures in this area."

33. The role that the right to participation plays in the implementation of the Declaration has been examined by the Expert Mechanism, including in its study on participation in decision-making (A/HRC/18/42), in which it stated that the right to participate is indivisible from and interrelated with other rights, such as the right to self-determination and rights to lands, territories and resources.

34. Several States noted that the right of indigenous peoples to participate in decision-making was part of domestic law. For example, Chilean law provided a procedure for indigenous peoples to have a technical advisory role when the Government was taking legislative or administrative measures that directly or indirectly impacted them. In Guatemala, the right to participate in decision-making was established in law, with the goal

of achieving respect for all cultures and peoples in the country, and promoting harmonious intercultural relations and participation in democratic processes.

35. Denmark and the Government of Greenland responded that the Government of Greenland was democratically elected and that all members of the Parliament and Government were of Inuit descent.

36. Although some States did not have specific legislation, they indicated that processes were underway to develop consultation protocols. For example, Paraguay and Peru had been developing consultation protocols in consultation with indigenous organizations.

37. France reported that the successive adoption of laws on New Caledonia (1999) and French Polynesia (2004) had allowed for significant progress in the full and effective participation of indigenous peoples in decisions that directly or indirectly affect them. The degree of autonomy was greater with each successive law. In French Guiana, it was decided to create a consultation council of Amerindians and *Bushinenge*.

38. Colombia made reference to the special circumscription for the election of senators and representatives from indigenous communities, which was enshrined in the Constitution. Colombia also highlighted the Mesa Permanente de Concertación (Permanent Commission for Dialogue), which facilitated dialogue between indigenous peoples and the State on all administrative and legislative measures that may affect them. Indigenous peoples were participating in this mechanism through five umbrella organizations.

39. Other States highlighted the general democratic processes as providing opportunities for indigenous peoples to participate in decision-making. Burundi, for example, highlighted the ways in which the national electoral system provided representation to the Batwa people.

40. In terms of responses from indigenous peoples, the Saami Parliament of Finland reported that there were no provisions in Finnish law requiring free, prior and informed consent. However, a proposed Amendment Act of the Saami Parliament would require authorities to conduct bona fide negotiations seeking agreement with the Saami Parliament concerning significant measures affecting the Saami homeland of the status of the Saami people.

41. Asociación Kunas Unidos por Napguana indicated that due to the special status of the Guna Yala region, the State had to consult the Kuna people prior to implementing large projects within their lands. In that regard, the Kuna Congress had rejected several projects because they threatened the integrity of their territory. They stressed, however, that in other indigenous regions of Panama, those consultation processes had not been respected, in particular in the lands of the Ngäbe-Buglé and Naso peoples.

42. The Teemashane Community Development Trust responded that, in Botswana, indigenous peoples were only consulted insofar as consultations on a particular issue were carried out through traditional meetings or village gatherings. However, this system did not favour the views of indigenous peoples. Rather, it was usually the dominant society's views and opinions that informed decisions.

D. Cultures and languages

43. The questionnaire posed the following question to States and indigenous peoples: "Have specific legislative, policy, or administrative measures been adopted to implement rights relating to cultures and languages? If yes, please provide details. If not, please outline any plans to develop legislative, policy or administrative measures in this area."

44. Indigenous peoples' languages and cultures are of fundamental importance for the protection and promotion of indigenous peoples' rights. As the Expert Mechanism argued in its advice on this theme, "The Declaration on the Rights of Indigenous Peoples should be the basis of all action, including at the legislative and policy level, on the protection and promotion of indigenous peoples' rights to their languages and cultures" (A/HRC/21/53, annex, para. 5).

45. Paraguay had developed a national plan of indigenous languages through a process of free prior and informed consultation with representatives from the 19 indigenous peoples in the country. The Linguistics Policy Secretariat had started activities to document and revitalize indigenous languages, especially those at greater risk. Efforts were also taken to raise public awareness nationally and internationally on the status of indigenous languages.

46. In Costa Rica, the National Policy on Cultural Rights included indigenous peoples' cultural rights as one of its five strategic axes. The objective of this axis was to promote the diversity and cultural wealth of indigenous peoples, both within and outside indigenous territories. Also, the Department of Intercultural Education of the Ministry of Education promoted respect and strengthening of indigenous cultures and languages.

47. Japan passed the Ainu Culture Promotion Act in 1997, which promoted Ainu culture and languages, as well as fostering public understanding of Ainu history. A national centre for revitalizing Ainu culture was set to open in 2020.

48. Peru had trained civil servants at the national and regional level on language rights and continued to work to strengthen the registry of interpreters and translators, which provided services in indigenous languages. Peru also reported having media in indigenous languages.

49. Guatemala indicated that it had a national law for the protection of cultural heritage and that the Constitution and national laws supported bilingual education as a means to affirm and strengthen the identity and cultural values of communities.

50. Chile was developing a process of national consultation for the creation of the Ministry of Culture with the nine indigenous peoples in Chile. The new ministry would provide indigenous peoples with State support to revitalize and protect their cultures and languages. There was also a recovery and revitalization of indigenous languages programme that provided research and other forms of support.

51. France indicated that, in Mayotte, a council of culture, education and the environment was set up in consultation with the Mayotte people. A regional cultural programme was developed focusing on the fields of languages, literature and the arts. In New Caledonia, the Tjibaou cultural centre opened in 1998 to promote the Kanak culture. The French Ministry of Culture had an active policy for the promotion of Polynesian culture. French Polynesia in particular had two museums, an arts academy, a house of culture and two academies (Polynesian and Marquesas). The French Government provided support when needed, particularly in the context of applications from Polynesia to secure recognition of sites in the United Nations Educational, Scientific and Cultural Organization (UNESCO) World Heritage listings. In accordance with the Convention for the Safeguarding of Intangible Cultural Heritage, France began to develop its inventory, including the Marake ritual in Guyana and the AIJE-Aro area in New Caledonia.

52. Red COMUNCACOL reported that bilingual education was being contemplated in legislative, policy and administrative measures in Colombia. ONG Adjmor indicated that, while indigenous cultures were promoted in Mali through support to traditional expressions and cultures, and the teaching of indigenous languages in primary schools, those programmes were often not sustainable in the long term due to budget constraints. In Panama, under the coordination of the General Congress, the Kuna people had

implemented bilingual education in schools in their region for the previous 10 years. However, the national education system in general did not respond to the specific needs of the Kuna people, often alienating them from their cultural and linguistic identity.

E. Non-discrimination and equality

53. The questionnaire posed the following question to States and indigenous peoples: "Have specific legislative, policy, or administrative measures relating to non-discrimination and equality been adopted? If yes, please provide details. If not, please outline any plans to develop legislative, policy or administrative measures in this area."

54. Non-discrimination and equality are a central principle of human rights. As article 2 of the Declaration states, "Indigenous peoples and individuals are free and equal to all other peoples and individuals, and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity."

55. Some States, including Cuba and Paraguay, noted that discrimination was prohibited under domestic law. Costa Rica identified not only domestic laws and policies, but also its ratification of international human rights instruments that prohibited all forms of discrimination. Costa Rica had a National Policy for a Society Free from Racism, Discrimination and Xenophobia, which in addition to strengthening the recognition of indigenous peoples' rights (and those of other groups), also sought to improve their living conditions.

56. Guatemala indicated that, in addition to national laws against racial discrimination, there was also a national policy for the advancement of women, which promoted the participation of Maya, Garifuna and Xinka women in the areas of economic, social, political and cultural development.

57. In 2015, the Government of Japan was to conduct a national survey on Ainu issues to find out and analyse the current level of public understanding of discrimination against the Ainu and determine the actual situation of discrimination against the Ainu. The results of this survey would be used when developing future policies.

58. Peru had taken steps to improve access to health, including adapting services to the particular needs of indigenous peoples. This included a national multisectoral health coordinating process with participation by civil society and indigenous organizations in the preparation and monitoring of the implementation of proposals in the areas of HIV/AIDS, malaria and tuberculosis.

59. There were efforts being made by the Government of Burundi to change the negative perceptions that other Burundians had of the Batwa people. The Burundi Constitution also recognized that all citizens were equal before the law. Furthermore, the national human rights policy had a chapter specifically relating to the Batwa.

60. Similarly to the State responses, several responses from indigenous peoples referred to constitutional and other provisions relating to non-discrimination and equality before the law. However, these responses also emphasized that there was a significant implementation gap and that indigenous peoples continued to be victims of discrimination, including in accessing social services.

F. Lands, territories and resources

61. The questionnaire posed the following question to States and indigenous peoples: "Have specific legislative, policy, or administrative measures been adopted to implement

rights relating to lands, territories and resources? If yes, please provide details. If not, please outline any plans to develop legislative, policy or administrative measures in this area."

62. The Expert Mechanism has repeatedly emphasized the importance of indigenous peoples' rights relating to lands, territories and resources, including in the context of access to justice, languages and cultures, and disaster risk reduction.

63. Peru noted that the titling of indigenous forest community lands was fundamental for the protection of other rights. Peru had a project aimed at titling and registering lands of indigenous communities in the Amazon. Paraguay had undertaken to title lands for several communities, including expropriating lands for the Sawhoyamaxa in compliance with the 2006 judgment of the Inter-American Court of Human Rights.

64. Colombia reported on an initiative to demarcate sacred sites in the Sierra Nevada de Santa Marta region, including through a consultation process with the indigenous peoples involved. Colombia also reported on measures taken to strengthen indigenous peoples' autonomy and governance in the Amazonas, Guainía and Vaupés departments.

65. France indicated that in New Caledonia, the Noumea agreements had fully recognized the special relationship the Kanak had with the Earth.

66. Denmark and the Government of Greenland noted that the Act on Greenland Self-Government provided for Greenland to assume a series of new fields of responsibility and introduced new arrangements regarding mineral resource activities in Greenland.

67. In Guatemala, the Ministry of Land Affairs was responsible for coordinating the implementation of land policy, including access to land; resolution of land disputes; access to other productive assets; and predictability and legal certainty. There was a regulation that established an administrative procedure for registration of the system of collective land tenure of indigenous communities. Connected to this procedure, 200 people (leaders, indigenous authorities, public authorities, academics and donors) were brought together to discuss the importance of communal lands and the need for environmental public entities. Finally, Guatemala had provided legal certainty to four Q'eqchi Maya communities settled within the buffer zone of the Biosphere Reserve Sierra de las Minas, which recognized the communal ownership of certain ancestral lands.

68. In relation to lands, territories and resources, some States identified the need to consider third-party interests and other public interests.

69. Japan provided examples of access to resources. For example, the local Government provided Ainu people special permission to catch salmon in inland waters to protect their traditional rituals.

70. Responses from Red COMUINCACOL (Colombia) and ONG Adjmor (Mali) stated that measures for protecting indigenous peoples' lands and resources existed, but that their enforcement was very weak. Tcemashane Community Development Trust mentioned that in Botswana the Tribal Land Act had been used to displace indigenous peoples from their lands in the name of conservation and social and economic development of the country.

G. Treaties, agreements and other constructive arrangements with States

71. The questionnaire posed the following question to States and indigenous peoples: "Have specific legislative, policy, or administrative measures been adopted to implement rights relating to treaties, agreements and other constructive arrangements with States? If yes, please provide details. If not, please outline any plans to develop legislative, policy or administrative measures in this area."

72. In response to this question, most States made reference to work to implement international human rights treaties, such as ILO Convention No. 169 and the Convention on the Elimination of All Forms of Racial Discrimination, rather than to treaties or other constructive agreements with indigenous peoples. Peru indicated that it did not have any treaties with indigenous peoples, but there were agreements arising from consultation processes, which must follow national laws on prior consultation. Colombia reported on measures it was taking to ensure the protection of indigenous peoples in voluntary isolation and initial contact.

73. Only one response from indigenous peoples addressed the specific issue of constructive arrangements between States and indigenous peoples. Asociación Kuna Unidos por Napguana highlighted the recognition of Kuna territory by the State in 1938, and recognition of their authorities (Congreso General Kuna) in 1953. They also referred to more recent national laws protecting cultural heritage and traditional handicrafts of the Kuna people and the establishment of the Ngäbe-Buglé indigenous territory in 1997.

H. Indigenous women, youth, children, elders, persons with disabilities and any other vulnerable groups

74. The questionnaire posed the following question to States: "Has the State taken any particular measures to promote and protect the rights of indigenous women, youth, children, elders, persons with disabilities and any other vulnerable groups (such as LGBT persons)? If yes, please provide details. If not, please outline any plans to develop measures relating to these groups."

75. In its follow-up study on access to justice, the Expert Mechanism drew attention to the fact that indigenous individuals who belonged to other vulnerable groups often suffered from discrimination on multiple grounds, which could put them in a particularly disadvantaged situation with respect to their rights. The Expert Mechanism advised States to "address the root causes of multiple forms of discrimination facing these groups, including systemic biased use of discretionary powers, poverty, marginalization and violence against indigenous women" (A/HRC/27/65, annex, para. 8).

76. In response to this question, many States identified general policies aimed at addressing the situation of women, youth, older persons and persons with disabilities. It was not always clear from the responses whether there were specific programmes targeted at indigenous persons within these groups.

77. Since 2012, Colombia had implemented a programme for the protection of the rights of internally displaced indigenous women, seeking to address the disproportionate impact of forced displacement on this group caused by armed conflict. At the heart of this public policy was the recognition of displaced indigenous women as subjects of special protection by the State. The design of the programme included consultations with indigenous peoples. Colombia also had a National Action Plan for the protection of the human rights of indigenous women.

78. Peru highlighted three particularly vulnerable groups identified in State policy: indigenous individuals who did not have identification documents, which perpetuated the level of invisibility within the State; indigenous peoples living in border areas where there was very difficult access; and indigenous women, particularly in terms of including them in national level plans and policies on gender.

79. In Japan, the Third Basic Plan for Gender Equality approved by the cabinet in 2010 stipulated that measures should be taken for Ainu women in cases where they were forced into difficult situations due to their gender.

80. Costa Rica highlighted its Pact for an Accessible and Inclusive Country, a programme aiming to address the double vulnerability of persons with disabilities who also belonged to other vulnerable groups, including indigenous peoples.

81. Paraguay identified programmes to address gender-based violence as well as extensive community centres, some of which were aimed at urban indigenous peoples.

82. The questionnaire posed the following question to indigenous peoples: "Have any particular measures been taken to promote and protect the rights of indigenous women, youth, children, elders, persons with disabilities and any other vulnerable groups (such as LGBT persons)? If yes, please provide details. If not, please outline any plans to develop measures relating to these groups."

83. Responses were very general, without a specific focus on indigenous peoples suffering from discrimination on multiple grounds.

I. Participation of indigenous peoples in the development and implementation of legislative, policy or administrative measures that affect them

84. The questionnaire posed the following question to States and indigenous peoples: "To what extent do indigenous peoples themselves participate in the development and implementation of legislative, policy, or administrative measures that affect them? Is their free, prior and informed consent required by law?"

85. The Expert Mechanism has examined the role of participation in the implementation of the Declaration, including the principle of free, prior and informed consent. In its study on participation in decision-making, the Expert Mechanism noted that specific laws and policies could lead to the effective implementation of this principle (A/HRC/18/42, para. 63).

86. Peru had carried out 19 consultation processes with indigenous peoples, of which 8 had so far resulted in agreements. The issues addressed in those consultations included environmental monitoring, participation in oversight bodies and employment. Peru had also organized an international seminar on prior consultation in the hydrocarbon sector to provide a comparative approach and lessons learned.

87. Through the Permanent Commission for Dialogue (Mesa Permanente de Concertación), the National Government of Colombia consulted with indigenous peoples regarding all administrative and legislative measures that could affect them. There was also a Constitutional Court judgment (T-129 of 2011) establishing exceptional cases in which free, prior and informed consent of indigenous peoples must be sought. These included projects that would involve the displacement of indigenous communities, the storage of toxic waste on indigenous lands, or a high social, cultural or environmental impact on the community.

88. Chile explained that there were national representative bodies of indigenous peoples that were consulted when laws and policies were developed. In Paraguay, a legislative bill was currently being studied that would ensure effective participation of indigenous peoples in development projects that could have negative impacts on their way of life, their lands and the environment. In Guatemala, there was currently a bill on consultation with indigenous peoples before Congress.

89. Costa Rica cited its ratification of ILO Convention No. 169, and the fact that domestic legislation required free, prior and informed consent in line with this international instrument.

90. In collaboration with non-governmental organizations, Burundi had developed agropastoral and various self-development projects with the Batwa to increase revenue and to meet the needs of Batwa people beyond food.

91. The Saami Parliament of Finland indicated that the Parliament of Finland had provisions on the obligation to hear the Saami people in its rules of procedure. According to those rules, a committee considering a Government bill or other issue concerning the Saami people in particular must reserve the right for representatives of the Saami people to be heard by the committee. However, that provision did not require the committee to take account of proposals made by the Saami Parliament.

J. Raising awareness about the Declaration

92. The questionnaire posed the following question to States: "Has the State taken measures to raise awareness about the Declaration among various sectors of society, including Parliamentarians, the judiciary, the civil service, and indigenous peoples?"

93. In the outcome document of the World Conference on Indigenous Peoples, States committed themselves to promoting awareness of the Declaration among all sectors of the society, including members of the legislatures, the judiciary and the civil service (General Assembly resolution 69/2, para. 7).

94. Several States indicated that they had developed resources such as training manuals and held training workshops on the Declaration. Australia's National Human Rights Commission had produced reports and developed resources to help Aboriginal and Torres Strait Islander peoples understand and protect their rights. The Aboriginal and Torres Strait Islander Social Justice Commissioner, in collaboration with the National Congress of Australia's First Peoples held "Declaration Dialogue" meetings in 2013 and 2014 with indigenous communities throughout Australia to raise awareness of the Declaration.

95. Denmark and the Government of Greenland reported on the translation into Greenlandic and publication of several international human rights instruments, including the Declaration and ILO Convention No. 169. The Parliament of Greenland endorsed the Declaration at an early stage and called for enhanced efforts to disseminate it to the public and through educational facilities.

96. Paraguay had taken action to inform legislators, lawyers, judges and administrative authorities on promoting the rights of indigenous peoples with an emphasis on the Declaration. In cooperation with the Federation for the Self-Determination of Indigenous Peoples, Paraguay had developed a manual on indigenous rights and human rights, published with the support of the United Nations Development Programme. In 2013, the Justice and Indigenous Peoples project provided technical assistance to the judicial officials on human rights doctrine and its applicability in the administration of justice. Indigenous peoples had participated in the process of developing the materials and providing information on their customs.

97. Guatemala had several programmes to increase understanding of civil servants, public institutions and civil society regarding indigenous peoples' rights. These included a postgraduate programme on human rights, the rights of indigenous peoples, racism and racial discrimination, aimed at judicial officers, especially in the judicial branch and the Institute of Public Criminal Defense. There was also a diploma course on human rights, racism and discrimination aimed at civil servants from different institutions of the executive branch and young members of civil society.

98. Peru had developed four training manuals, including one on the rights of indigenous peoples in Peru, to train environment officials and leaders on these issues in an effort to increase competency.

99. In Japan, Ainu policy made reference to relevant provisions of the Declaration. The Declaration had also been translated into Japanese.

100. The questionnaire posed the following question to indigenous peoples: "Have you taken any measures to raise awareness about the Declaration at various levels of the community and governance to enhance the prospects of its implementation?"

101. Responses from indigenous peoples referenced capacity-building workshops and the development of training materials. Red COMUINCACOL stressed the importance of developing easy-to-understand learning materials and using communications media and the education system. Les Amis du Sankuru indicated that, while they had carried out dissemination within their organization and nearby communities, financial constraints made it difficult to reach more distant provinces and to purchase media space for dissemination.

K. Challenges encountered in adopting measures and implementing strategies to achieve the ends of the Declaration

102. The questionnaire posed the following question to States and indigenous peoples: "What are the main challenges encountered in adopting measures and implementing strategies to achieve the ends of the Declaration?"

103. States noted a range of challenges to achieve the ends of the Declaration. Some States highlighted the translation of the Declaration into indigenous languages as an ongoing challenge for future work. Burundi identified the low literacy rates among the Batwa as a challenge. Chile noted that a specific challenge was the diversity of indigenous peoples within the country, which required a detailed framework to respond to the differences amongst indigenous peoples.

104. Peru indicated that the lack of national data presented a problem for implementation. It also indicated that consultation was a challenge because capacity had to be built among both public sector staff and indigenous leaders. Peru also reiterated the challenge of the diverse and dispersed populations of indigenous peoples.

105. Guatemala indicated a need to strengthen institutional mechanisms to protect indigenous peoples' rights, as well as a need for more opportunities for inter-agency coordination with civil society to monitor the actions and measures in the implementation of the Declaration on the Rights of Indigenous Peoples and to achieve the fulfilment of its objectives.

106. Colombia cited three challenges: the re-establishment of peace in those indigenous territories that were still facing difficulties caused by armed conflict; the complexities of implementing policies and programmes, given the geographical dispersion of indigenous peoples in the country; and conflicts of representation within some indigenous organizations/communities.

107. Some States again reiterated that the provision of financial resources was essential to implementation of the Declaration, particularly in relation to promoting and revitalizing languages.

108. The main challenges identified by indigenous peoples included lack of political will, lack of knowledge of the Declaration among local authorities, and the fact that indigenous peoples' rights were often set against the rights of the mainstream population.

L. Promising practices

109. The questionnaire posed the following question to States and indigenous peoples: "In the light of the information provided above, please provide examples of promising practices regarding possible appropriate measures and implementation strategies to attain the goals of the Declaration."

110. Some States emphasized the need to assess the impact of policies and programmes where success was not being achieved, and to be prepared to try new approaches. Australia emphasized a need for best practice strategies to rely on clear data, with a focus on practical outcomes to ensure that policies deliver real results on the ground. It was important to engage indigenous peoples in this problem-solving approach.

111. In Chile, the National Indigenous Development Corporation and the Department of the Environment worked jointly and in coordination to provide technical support to indigenous consultation processes in connection with environmental assessment processes.

112. Guatemala highlighted, among other public policy and institutional initiatives, the establishment in 2014 of the Cabinet for Indigenous Peoples and Interculturalism, which formulated proposals for political, administrative and legal reforms, focusing on integral and culturally-appropriate development for indigenous peoples. This office included members of the Executive and representatives of the Maya, Garifuna and Xinka peoples. Another example of best practice was the Institution for the Defence of Indigenous Women (Defensoría de la mujer indígena), which was a Governmental institution that worked with indigenous women to develop policies, plans and programmes for the prevention, protection and eradication of all forms of violence and discrimination against indigenous women.

113. Peru indicated that the training of interpreters and translators had allowed for services, particularly health services, to be provided in different languages. Those interpreters had also assisted in the consultation processes.

114. The Saami Parliament of Finland noted that Finland, Sweden and Norway had initiated negotiations on a Nordic Saami Treaty, with the objective of harmonizing legislation concerning the Saami people. Those negotiations had included the Saami Parliaments of the three countries. However, negotiations on the treaty had been suspended for the time being. Also, Pan-Nordic conferences to discuss progress in attaining the goals of the outcome document of the World Conference on Indigenous Peoples had been held periodically, with the participation of indigenous peoples.

115. Red COMUNCACOL emphasized the importance of empowering indigenous communities through training and awareness-raising. Asociación Kunas Unidos por Napguana highlighted the Kuna people's successful struggle to achieve autonomy and recognition.

M. Feedback on the role of the Expert Mechanism

116. The questionnaire posed the following question to States and indigenous peoples: "In light of paragraph 28 of the outcome document of the World Conference on Indigenous Peoples (General Assembly resolution 69/2), please provide feedback on how the Expert Mechanism can more effectively promote respect for the Declaration, and how it can better assist States to monitor, evaluate and improve the achievement of the ends of the Declaration."

117. In paragraph 28 of the outcome document of the World Conference on the Rights of Indigenous Peoples, the General Assembly invited the Human Rights Council, "taking into

account the views of indigenous peoples, to review the mandates of its existing mechanisms, in particular the Expert Mechanism on the Rights of Indigenous Peoples… with a view to modifying and improving the Expert Mechanism so that it can more effectively promote respect for the Declaration, including by better assisting Member States to monitor, evaluate and improve the achievement of the ends of the Declaration."

118. Australia noted that the Expert Mechanism could assist States by sharing examples of successful measures taken by other Member States. Paraguay suggested that the Expert Mechanism work with States to develop guidelines and performance indicators to guide and improve monitoring to achieve the aims of the Declaration. The suggestion for development of indicators was echoed by Guatemala. Guatemala also suggested that the Expert Mechanism conduct regional studies considering the particularities of the various regions, including political and cultural differences. Guatemala also suggested that the Expert Mechanism work with States to strengthen national institutions that were mandated to develop the rights of indigenous peoples. Peru echoed calls for developing standardized monitoring indicators and indicated that the Expert Mechanism could be a platform for exchanging information and best practices among States.

119. The Saami Parliament of Finland responded that the implementation of commitments under the Declaration should be monitored on a regular basis, adding that such monitoring should be State-specific and that indigenous peoples living in the State in question should be heard. The Saami Parliament of Finland also suggested that recommendations should be issued to States for more effective implementation of the Declaration.

120. Teemashane Community Development Trust suggested that the Expert Mechanism could assist States in aligning domestic legislation to the Declaration.

III. Concluding comments

121. **The Expert Mechanism on the Rights of Indigenous Peoples very much appreciates the responses of States and of indigenous peoples and indigenous peoples' organizations to its questionnaire. The responses received allow the Expert Mechanism to evaluate some of the advances and challenges in the implementation of the Declaration from the perspectives of both States and indigenous peoples. However, the Expert Mechanism regrets the relatively low number of responses received and the fact that many Sates with indigenous peoples did not submit any information on their laws, policies and practices related to the implementation of the Declaration.**

122. **The majority of responses received from States provide information at a very general level. While information was provided on laws, policies and programmes relating to indigenous peoples, there was almost no information indicating the effectiveness of the measures taken. Most States provided only positive answers to questions. Negative answers would also provide a greater understanding of the barriers faced by States when implementing the Declaration.**

123. **Although several States reported on sectoral initiatives to implement provisions of the Declaration in areas such as education, health and environmental policy, very few reported on strategies or national action plans for the full implementation of the Declaration. There was also a lack of information as to any plans to develop such strategies or action plans, despite the commitment made by the Member States in the outcome document of the World Conference on Indigenous Peoples. Given the interdependence and interrelatedness of the rights contained in the Declaration, its implementation requires comprehensive approaches and actions, as highlighted in the outcome document of the World Conference on Indigenous Peoples. Furthermore, in**

some cases the role that indigenous peoples and their own representative institutions played in developing these initiatives remains unclear.

124. The Expert Mechanism underscores that substantive equality may require treating indigenous peoples as distinct groups facing unique circumstances. Several States discussed their commitment to equality and the equal treatment of all citizens under domestic law. However, some responses pointed towards the fact that equality is sometimes interpreted as prohibiting specialized programmes aimed at achieving the goals of the Declaration. The Expert Mechanism notes that the framework provided in the Declaration implies a need for special measures for indigenous peoples to ensure that they can enjoy the same rights and freedoms as other citizens. Indeed, special measures are specifically identified in numerous provisions of the Declaration.

125. Several responses from States showed encouraging progress in terms of efforts to adopt national legislation relating to indigenous peoples' right to participate in decision-making. However, it was not always clear whether States were following the obligation to seek indigenous peoples' free, prior and informed consent. Instead, several States referred to "prior consultation". The Expert Mechanism encourages States to ensure that consultation processes work towards seeking indigenous peoples' free, prior and informed consent.

126. Some States expressed concern that the diversity of indigenous peoples, geographic dispersion, and the lack of a unified indigenous voice often make it difficult to develop policies. The Expert Mechanism notes that the Declaration recognizes and embraces the diversity of indigenous peoples. This diversity may lead to different needs and different voices expressed by indigenous peoples within the same State, which should be adequately addressed in order to aid the implementation of the Declaration.

127. In answering questions, some States highlighted general measures of non-discrimination, gender equality and the protection of specific vulnerable groups. While the Expert Mechanism commends States for undertaking these measures, it encourages them to continue to examine how to best address the situation of indigenous peoples and individuals facing discrimination on multiple grounds.

128. Responses from indigenous peoples provide examples of approaches and activities, including advocacy and awareness-raising, development of resources on the Declaration, training for indigenous communities and organizations, and translating the Declaration into indigenous languages. However, few of the indigenous peoples that responded proposed overarching strategies for implementation of the Declaration. This may partly be due to the fact that most of the indigenous respondents work at the local level and are generally limited by a lack of financial resources and, in some cases, by a lack of will from State institutions to cooperate and engage with indigenous peoples.

129. Most indigenous peoples' organizations reported a lack of attention from States in considering the Declaration and, more generally, the rights of indigenous peoples. These concerns hamper the effective implementation of the Declaration.